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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re A.T. et al., Coming Under the
Juvenile Court Law.

H045681, H045858
(Santa Cruz County
Super. Ct. No. 17JU00384)

SANTA CRUZ COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

M.M.,

Defendant and Appellant.

Mother M.M. appeals several orders entered by the juvenile court in a dependency proceeding. Her court appointed counsel on appeal filed a letter brief pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835 (*Phoenix H.*) stating the facts and procedural history, but failing to raise any arguable issues on appeal. This court granted Mother's request to file a supplemental brief. Because Mother fails to raise any arguable issues in her supplemental brief, we will dismiss the appeals.

I. PROCEDURAL BACKGROUND

In 2017 the Santa Cruz County Human Services Department ("Department") received reports that Mother had physically abused her 15-year-old son A.T. by punching him, hitting him with a broom and by stabbing him with a hanger. A.T. reported that Mother had been physically and emotionally abusive to him since he was young, but had

coached him to tell the Department that nothing had happened. He reported that Mother often called him fat and told him she would not be okay with him being homosexual. Because of family history of depression, and her prior placement in a psychiatric hospital, Mother voluntarily agreed to family maintenance services. A.T. was removed from Mother's home. A short time later, A.T. told the social worker that he could not go home because he was afraid of Mother's abuse. He played a voice recording of Mother screaming at him and calling him names for the social worker.

On December 28, 2017, the Department filed a petition pursuant to section 300, subdivisions (a), (b), (c), and (j) ("Petition") alleging that A.T. had suffered serious physical harm, that there was a substantial risk he would suffer serious physical harm in the future, that Mother was unable to supervise or protect him adequately, and that Mother suffered from various mental health issues, and had taken A.T. out of school and had directed him to lie to social workers and counselors about what occurred in the family home. The Petition further alleged that A.T. was suffering, and there was a substantial risk he would continue to suffer, serious emotional damage as a result of Mother's conduct. According to the Petition, Mother regularly called A.T. derogatory names and he suffered from an eating disorder, body image issues, and past suicidal ideation. Finally, the Petition alleged that at least one of A.T.'s older siblings had previously been placed in protective custody, had been abused or neglected in the past, and there was a substantial risk that A.T. would be abused or neglected in the same manner. A subsequent report filed by the Department alleged that A.T. had been sexually abused by a male cousin, that Mother had known about it, and had stopped it but had never reported it. A.T. also reported being sexually abused by a classmate. At the detention hearing, the court found that remaining in the home was contrary to A.T.'s welfare and ordered continued out of home placement and services.

By the time of the contested jurisdictional and dispositional hearing, things had not improved. A.T. refused to have visits with mother because he felt she would try to

manipulate him, threaten him, and make him feel bad about his disclosures. The Department continued to recommend out of home placement. A.T. submitted a letter to the judge detailing his feelings of low self-worth, describing the names Mother had called him and recounting how she had abused him physically. He stated that he could not be around Mother because he needed time to heal. Additionally, the Department reported that Mother had not begun counseling or parenting education, and had not completed the requested psychological evaluation.

At the March 26, 2018 contested hearing, the court granted A.T.'s request to testify in chambers, or a closed courtroom. The request was supported by a letter from the mental health specialist working with A.T. In the letter the specialist opined that because A.T. had recently been discharged from the psychiatric hospital, testifying in front of Mother could worsen his condition and increase his symptoms. According to the specialist, A.T. experienced significant anxiety and emotional dysregulation regarding any interaction with mother, particularly concerning testifying against her. The specialist recommended that A.T. not be made to testify in open court. The court found it had the power to control the proceedings to reduce any trauma caused to a child by testifying in front of a parent. Mother's counsel stated that Mother wanted to hear what A.T. would say during his testimony, but she understood the issue. Mother agreed to step out of the courtroom during A.T.'s testimony. Mother's counsel asked that at the close of A.T.'s testimony she be given an opportunity to summarize his testimony to Mother. The court granted this request.

At the hearing, A.T. testified that he would be sixteen the following month, and that Mother had begun physically disciplining him when he was four or five years old. Almost every day mother would punch him or slap him, and sometimes would also give him and his older sister cold baths or showers as punishment. Over the years she had hit and stabbed him with a chair, forks, spoons, a high heel, and cords, and most recently with a broom and plastic coat hanger. Mother also used physical discipline on his

siblings, including stabbing his sister in the hand with a pencil and hitting his brother with a pan from the kitchen stove. A.T. also testified that after the most recent incidents, he stopped going to school and counseling, because Mother directed him to stop. She also told him to tell the social worker he had been lying. He stated that he was terrified of returning to Mother's home because he was terrified she was going to beat him.

A.T. further revealed that since the detention hearing, while he was staying at his aunt's house, Mother had come over, stood outside the bathroom where he had locked himself in, and hurled terrible insults at him through the door. He stated that Mother used derogatory names every day, which made him feel "pathetic" and "disgusting." He further related that when he had talked to Mother on the phone approximately four weeks prior, she had called him by a derogatory term associated with her perception of his sexual orientation.

Mother called A.T.'s 18-year-old sister, as a rebuttal witness. The sister remembered the incident when she had been stabbed in the hand, but remembered it happening at school. She denied that Mother had never disciplined them by dumping cold water on them, and stated that she had never seen mother hit either of her brothers. She acknowledged that her older brother had said that mother hit A.T., and knew there was a past case when her older brother said Mother had hit him. She also admitted that she had heard mother call A.T. fat, and that she had heard Mother say that she did not want her children to be homosexual.

Mother testified that she did not physically discipline A.T., but admitted to grabbing a hanger when they fought to make him stop. She denied hitting him with a broom. She admitted punching him, but denied doing that every day. She admitted screaming at him when she was angry. She denied slapping him. Mother acknowledged that A.T. had mental health issues and admitted to a history of depression herself. She admitted that she had told him to stop eating because he needed to lose weight, but stated that he was not offended. Mother denied calling him by derogatory names based on her

perception of his sexual orientation. Mother told the court she could not handle A.T. and she wanted him back with her only when he really loved her.

Based on the evidence, the court found all of the allegations in the Petition true, and sustained the Petition. The court recognized how much mother loved her children, and how proud she was of them, but found A.T.'s testimony credible and corroborated by the evidence. The court found that remaining in the home would be detrimental to A.T., that his welfare required physical custody be taken from Mother because he was suffering severe emotional damage, and that Mother had made minimal progress toward alleviating the causes of the initial placement. The court ordered reunification services, found the case plan was necessary and appropriate, and advised Mother that if she did not substantially comply with services, the court may terminate services. On March 27, 2018, Mother timely filed a notice of appeal from the court's March 26, 2018 jurisdictional and dispositional order.

Shortly thereafter, on April 30, 2018, the Department filed an emergency application for an order to administer psychotropic medication to A.T. A.T. had been the subject of a 72-hour psychiatric hold under Welfare and Institutions Code section 5150 after he reported to his counselor that he was having suicidal ideations due to nightmares and flashbacks of past sexual abuse. A.T. was reportedly having symptoms of untreated depression, anxiety, and PTSD, and he was experiencing increasingly severe suicidal thoughts. The application included the medication names, dosages, and possible side effects. On April 30, 2018, Mother filed an opposition to the medication request, contending that her son had never been sick and did not need medication. She argued that he was fine when living with her. The court set the matter for a hearing.

At the hearing on May 17, 2018, A.T.'s counsel agreed that medication was appropriate and supported the request. Mother objected arguing that he did not need to be medicated because he was too young, and that his depression had been caused by what was happening with the dependency. The court granted the request, finding it supported

by the doctor's recommendation. On May 30, 2018, Mother filed a timely notice of appeal from the court's order granting the medication request.

On appeal, we appointed counsel to represent Mother. Appointed counsel filed a letter brief pursuant to *Phoenix H.*, stating the case and facts, but raising no arguable issues on appeal. Pursuant to *Phoenix H.* this court notified Mother of her right to submit a request showing good cause to file a supplemental brief. Thereafter, Mother sought permission to file a supplemental brief. On November 5, 2018, we granted her request. On December 3, 2018, Mother filed two documents, a supplemental letter and a supplemental brief. (*Phoenix H.*, *supra*, 47 Cal.4th at pp. 844-845.)

II. DISCUSSION

In her supplemental filings Mother contends that the order of removal was not supported by substantial evidence, and that the court violated her due process rights by not providing her with an interpreter and by excluding her from the jurisdictional hearing during A.T.'s testimony. None of Mother's contentions raise an arguable issue.

A. Substantial Evidence

Mother argues that the facts of the case do not support the jurisdictional finding. She states that besides the claim that she called A.T. fat, there is "very little other evidence," other than A.T.'s testimony, to support the claims in the Petition.

Mother misconstrues what constitutes substantial evidence to support the jurisdictional finding. On appeal our authority is limited to determining whether there is substantial evidence to support the juvenile court's jurisdictional findings. We do not review the jurisdictional findings to see if substantial evidence would support findings in favor of Mother, and we cannot reweigh the evidence as she suggests. Rather, "[i]f this 'substantial evidence' is present, no matter how slight it may appear in comparison with the contradictory evidence, the judgment must be upheld." (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631.) " " " "Under this standard, we do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence, or reweigh the

evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if there is other evidence supporting a contrary finding. [Citations.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the court's findings. [Citation.]” [Citation]’ [Citation.]” (*In re Alexandria P.* (2016) 1 Cal.App.5th 331, 354.) The juvenile court here expressly found A.T.’s testimony credible. That testimony was corroborated by various reports and a recording. Together this evidence supports the jurisdictional and dispositional findings. Therefore, we cannot entertain Mother’s “attempt to reargue on appeal those factual issues decided adversely to [her] . . . , contrary to established precepts of appellate review.” (*Hasson v. Ford Motor Co.* (1982) 32 Cal.3d 388, 398-399.)

B. Interpreter Services

Next Mother argues that even though the Jurisdiction/Disposition Report (“Report”) noted that she required a Spanish interpreter, and she had an interpreter assisting her at the initial detention hearing, none was provided to her at the subsequent hearings on January 30, 2018 and March 26, 2018. She contends this violated her due process rights.

It is generally undisputed that parents in dependency proceedings are entitled to interpreters should they need one. (See Evid. Code, § 756, subd. (b)(3).) Generally, the California Judiciary has made expansion of language access throughout the branch a high priority. The Language Access Plan Implementation Task Force was tasked with creating a Language Access Plan in order to strengthen the California judiciary’s capacity to meet the needs of millions of people with limited English proficiency. (See generally, *Language Access Metrics Report*, July 2018, <<https://jcc.legistar.com/View.ashx?M=F&ID=6944494&GUID=64180FF6-45F8-4D5B-AECD-2783B2F10A14>> at pp 53-56, [as of Feb. 8, 2019], archived at:

<<https://perma.cc/2MYA-GTCH>>.) While this right is established and grounded in well settled public policy, it is not without exception and it can also be waived.

Mother, in fact, expressly waived this right for the March 26th jurisdictional/dispositional hearing. The minutes from this hearing state “Minor’s Mother [M.M.] waives the Spanish Interpreter.” Neither Mother nor her counsel objected to the lack of interpreter on the record. The issue was not discussed at the hearing. Similarly, Mother failed to object to the lack of interpreter at the January 30th hearing. At that hearing, the transcript and minute order are both silent on the issue of an interpreter. There is no express waiver in the minutes, but neither Mother nor her counsel objected on the record to the lack of an interpreter. On the contrary, Mother participated fully in English at both hearings. There is no indication that she had any difficulty understanding the proceedings. She spoke up without hesitation on numerous occasions prompted and unprompted. While Mother is correct that the Report stated that she required a Spanish interpreter, and she was assisted by a Spanish language interpreter at the detention hearing, the Report also stated that Mother was bilingual and chose to speak English on certain occasions. She chose to do so at the January 30th and March 26th hearings. Having waived her right to a Spanish interpreter and having failed to object to proceeding without one, Mother cannot now argue on appeal that the court violated her due process rights by failing to provide an interpreter.

C. Exclusion from the Hearing During A.T.’s Testimony

Finally, Mother complains that she was excluded from the courtroom during the jurisdictional hearing without a finding of fact that it was in A.T.’s best interest. Mother’s claim is not supported by the facts she herself presents. She was excluded during A.T.’s testimony only after she voluntarily agreed to leave the courtroom. When counsel for A.T. moved to allow him to testify without Mother, Mother’s trial counsel stated, “[Mother] would like very much to hear what her son will say during his testimony. However, she understands. She does not want in any way him to be stressed

or—and she would agree to step out of the courtroom during the testimony.” The court and Mother agreed that she would absent herself during A.T.’s testimony and that after it was concluded Mother’s counsel would report to her the contents of the testimony. Having agreed to this process, Mother cannot now raise an arguable issue on appeal by complaining that the exclusion was not supported by factual findings.

Having failed to raise any arguable issue on appeal from the jurisdictional, dispositional and medication orders, Mother’s appeal must be dismissed.

III. DISPOSITION

The appeals filed by Mother on March 27, 2018 and May 30, 2018 are dismissed.

Greenwood, P.J.

WE CONCUR:

Elia, J.

Grover, J.

In re A.T., et al.; HSD v. M.M.
H045681, H045858